

COMPILATION OF STATUTES
REGARDING THE
DEPARTMENT OF NATURAL RESOURCES

GENERAL AUTHORITIES

- Includes: I. Chapter 61, Article 2: General Administration
II. Chapter 2, Article 46: Erosion and Sediment Control Act
III. Chapter 46, Article 14: Decommissioning Fund
IV. *Neb. Rev. Stat.* §§ 2-967 – 2-968: Riparian Vegetation Management Task Force
V. *Neb. Rev. Stat.* §§ 2-1568 – 2-1569: Data Bank
VI. *Neb. Rev. Stat.* §§ 2-1599 – 2-15,106: Water Planning and Review Process
VII. *Neb. Rev. Stat.* § 2-2626: Pesticide Act
VIII. *Neb. Rev. Stat.* §§ 2-3226.06 – 2-3226.09: Water Contingency Cash Fund
IX. *Neb. Rev. Stat.* § 2-3254: Improvement Project Areas
X. *Neb. Rev. Stat.* § 2-32,102: Interstate Agreements
XI. *Neb. Rev. Stat.* § 2-4215: Conservation Corporation
XII. *Neb. Rev. Stat.* § 2-4901: Climate Assessment Response Committee
XIII. *Neb. Rev. Stat.* § 25-1062.01: Courts Civil Procedure
XIV. *Neb. Rev. Stat.* § 33-105: Fees
XV. *Neb. Rev. Stat.* § 37-707: State Game Refuges
XVI. *Neb. Rev. Stat.* § 37-807: Nongame and Endangered Species Act
XVII. *Neb. Rev. Stat.* §§ 46-2,131 – 46-2,138: Water Policy Task Force
XVIII. *Neb. Rev. Stat.* §§ 46-2,140 – 46-2,141: Republican River Basin Sustainability Task Force
XIX. *Neb. Rev. Stat.* § 46-1217: Water Well Contractors Licensing Board
XX. *Neb. Rev. Stat.* § 81-101: Governor and Administrative Departments
XXI. *Neb. Rev. Stat.* § 81-102: Department Heads
XXII. *Neb. Rev. Stat.* § 86-570: Geographic Information Systems Council
XXIII. *Neb. Rev. Stat.* § 28-106: Classification of Penalties

SEPTEMBER 2019

Disclaimer: This booklet was compiled for the convenience of Department staff and is not intended to replace Nebraska's Reissue Revised Statutes. It is always recommended that one research the actual statutes when making a determination. This book does not always contain all statutes regarding a specific topic and it may become out-of-date when statutes are amended, adopted, or repealed.

TABLE OF CONTENTS

CHAPTER 61

ARTICLE 2

GENERAL ADMINISTRATION

<u>Section</u>		<u>Page</u>
61-201	Director of Natural Resources; qualifications.	1
61-202	Director of Natural Resources; employment of personnel.	1
61-203	Director of Natural Resources; seal; certified copies of records; admissibility as evidence.	1
61-204	Department of Natural Resources; rules and regulations.	1
61-205	Department of Natural Resources; general grant of authority.	2
61-206	Department of Natural Resources; jurisdiction; rules and regulations; hearings; orders; powers and duties.	2
61-207	Department of Natural Resources; decisions; appeal; time; procedure.	4
61-208	Department of Natural Resources; powers; survey of streams.	5
61-209	Department of Natural Resources; powers; water data collection; fee.	6
61-210	Department of Natural Resources Cash Fund; created; use; investment.	6
61-211	Department of Natural Resources; powers; measuring devices; gauge height reports; requirements; violation; penalty.	6
61-212	Water divisions; denomination.	7
61-213	Water division No. 1; boundaries.	7
61-214	Water division No. 2; boundaries.	7
61-215	Water divisions; division supervisors.	8

<u>Section</u>		<u>Page</u>
61-216	Water divisions; division supervisors; duties.	8
61-217	Repealed.	8
61-218	Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.	8
61-219	Repealed.	11
61-222	Water Sustainability Fund; created; use; investment.	11
61-223	Water Sustainability Fund; legislative intent.	11
61-224	Critical Infrastructure Facilities Cash Fund; created; use; investment; transfers.	11

CHAPTER 2

ARTICLE 46

EROSION AND SEDIMENT CONTROL ACT

<u>Section</u>		<u>Page</u>
2-4601	Act, how cited.	13
2-4602	Legislative findings.	13
2-4603	Terms, defined.	13
2-4604	State program; director; duties; program contents; approval; revisions.	15
2-4605	District program; contents; review.	16
2-4606	Municipal or country rules and regulations; authorized; conformance with state program; enforcement; failure to conform, effect.	16
2-4607	District; adoption or revision of rules and regulations; procedure; availability.	17

<u>Section</u>		<u>Page</u>
2-4608	Excessive soil erosion; complaint; inspection; remedial action; failure to comply.	17
2-4609	Filing of complaint; effect.	18
2-4610	Conformance with farm unit conservation plan or soil-loss limit; effect; lack of cost-sharing assistance; effect; cost-sharing assistance; availability.	18
2-4611	Administrative order; appeal.	19
2-4612	Order for immediate compliance; when authorized.	19
2-4613	District court action; procedures; order; appeal; failure to comply with order; effect.	20

CHAPTER 46

ARTICLE 14

DECOMMISSIONING FUND

<u>Section</u>		<u>Page</u>
46-1401	Legislative findings and intent.	21
46-1402	Definitions, where found.	21
46-1403	Water Well Decommissioning Fund; created; use; investment.	21
46-1404	Water Well Decommissioning Fund; allocation; rules and regulations.	22
46-1405	Natural resources district; cost-sharing program; qualification for funding.	22

CHAPTER 2

ARTICLE 9

RIPARIAN VEGETATION MANAGEMENT TASK FORCE

<u>Section</u>		<u>Page</u>
2-967	Repealed.	24
2-968	Repealed.	24

CHAPTER 2

ARTICLE 15

DATA BANK

<u>Section</u>		<u>Page</u>
2-1568	Department; data bank; establish; maintain; administer; available to other agencies.	25
2-1569	Basic data, defined.	25

CHAPTER 2

ARTICLE 15

WATER PLANNING AND REVIEW PROCESS

<u>Section</u>		<u>Page</u>
2-1599	Statement of purpose.	26
2-15,100	Water planning and review; how conducted; assistance.	26
2-15,101	Appropriations; procedure.	26
2-15,102	Repealed.	27
2-15,103	Commission; duties.	27
2-15,104	Repealed.	27
2-15,105	Public hearings; materials; made available to public.	27
2-15,106	Annual report; contents.	27

CHAPTER 2

ARTICLE 26

PESTICIDE ACT

<u>Section</u>		<u>Page</u>
2-2626	Department; powers and duties.	29

CHAPTER 2

ARTICLE 32

WATER CONTINGENCY CASH FUND

<u>Section</u>		<u>Page</u>
2-3226.06	Payment to water rights holders; authorized.	34
2-3226.07	Water Contingency Cash Fund; created; investment; natural resources district; financial assistance; request to department; compensation to water rights holders.	34
2-3226.08	Financial assistance; district; repayment; duties.	35
2-3226.09	Department; State Treasurer; duties.	35

CHAPTER 2

ARTICLE 32

IMPROVEMENT PROJECT AREAS

<u>Section</u>		<u>Page</u>
2-3254	Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.	36

CHAPTER 2

ARTICLE 32

INTERSTATE AGREEMENTS

<u>Section</u>		<u>Page</u>
2-32,102	Natural resources; agreements with other states; authorized.	39

CHAPTER 2

ARTICLE 42

CONSERVATION CORPORATION

<u>Section</u>		<u>Page</u>
2-4215	Coordinate activities with state and natural resources districts.	40

CHAPTER 2

ARTICLE 49

CLIMATE ASSESSMENT RESPONSE COMMITTEE

<u>Section</u>		<u>Page</u>
2-4901	Climate Assessment Response Committee; created; members; expenses; meetings.	41

CHAPTER 25

ARTICLE 10

COURTS CIVIL PROCEDURE

<u>Section</u>		<u>Page</u>
25-1062.01	Director of Natural Resources, defined; notice to appropriator; how given.	42

CHAPTER 33

ARTICLE 1

FEES

<u>Section</u>		<u>Page</u>
33-105	Department of Natural Resources; fees.	43

CHAPTER 37

ARTICLE 7

STATE GAME REFUGES

<u>Section</u>		<u>Page</u>
37-707	Game refuges; boundaries; marking; Department of Natural Resources; duties; access to property; when.	45

CHAPTER 37

ARTICLE 8

NONGAME & ENDANGERED SPECIES ACT

<u>Section</u>		<u>Page</u>
37-807	Commission; establish conservation programs; agreements authorized; Governor and state agencies; duties; public meeting; when required.	46

CHAPTER 46

ARTICLE 21

WATER POLICY TASK FORCE

<u>Section</u>		<u>Page</u>
46-2,131	Repealed.	48
46-2,132	Repealed.	48
46-2,133	Repealed.	48
46-2,134	Repealed.	48
46-2,135	Repealed.	48
46-2,136	Repealed.	48
46-2,137	Repealed.	48
46-2,138	Repealed.	48

CHAPTER 46

ARTICLE 2

REPUBLICAN RIVER BASIN WATER
SUSTAINABILITY TASK FORCE

<u>Section</u>		<u>Page</u>
46-2,140	Repealed. Laws 2015, LB 9, § 1.	49
46-2,141	Repealed. Laws 2015, LB 9, § 1.	49

CHAPTER 46

ARTICLE 12

WATER WELL CONTRACTORS LICENSING BOARD

<u>Section</u>		<u>Page</u>
46-1217	Water Well Standards and Contractors' Licensing Board; created; members; qualifications.	50

CHAPTER 81

ARTICLE 1

GOVERNOR AND ADMINISTRATIVE DEPARTMENTS

<u>Section</u>		<u>Page</u>
81-101	Executive department; civil administration vested in Governor; departments created.	51

CHAPTER 81

ARTICLE 1

DEPARTMENT HEADS

<u>Section</u>		<u>Page</u>
81-102	Department heads; enumeration; appointment and confirmation; removal.	53

CHAPTER 86

ARTICLE 5

GEOGRAPHIC INFORMATION SYSTEMS COUNCIL

<u>Section</u>		<u>Page</u>
86-570	Geographic Information Systems Council; created; members; appointment; terms; expenses.	54

CHAPTER 28

ARTICLE 1

CLASSIFICATION OF PENALTIES

<u>Section</u>		<u>Page</u>
28-106	Misdemeanors; classification of penalties; sentences; where served.	55

CHAPTER 61

ARTICLE 2

GENERAL ADMINISTRATION

61-201. Director of Natural Resources; qualifications.

The Director of Natural Resources shall be qualified by training and business experience to manage and supervise the Department of Natural Resources. The director shall be a professional engineer as provided in the Engineers and Architects Regulation Act and have had at least five years' experience in a position of responsibility in irrigation work.

Source: Laws 1957, c. 365, § 19, p. 1241; Laws 1959, c. 219, § 2, p. 767; Laws 1969, c. 386, § 1, p. 1355; Laws 1997, LB 622, § 75; R.S.1943, (1998), § 46-701; Laws 2000, LB 900, § 1.

Cross Reference

Engineers and Architects Regulation Act, see section 81-3401.

61-202. Director of Natural Resources; employment of personnel.

The Director of Natural Resources may employ such personnel, including legal and technical advisors, as necessary to carry out the duties required of the director.

Source: Laws 1957, c. 365, § 20, p. 1241; R.S.1943, (1998), § 46-702; Laws 2000, LB 900, § 2.

61-203. Director of Natural Resources; seal; certified copies of records; admissibility as evidence.

The Director of Natural Resources shall adopt a seal. Copies of all records or other instruments in the Department of Natural Resources when certified by the department as true copies and bearing the seal thereof shall be received in any court as prima facie evidence of the original record or instruments.

Source: Laws 1957, c. 365, § 21, p. 1241; R.S.1943, (1998), § 46-703; Laws 2000, LB 900, § 3.

61-204. Department of Natural Resources; rules and regulations.

(1) The Director of Natural Resources may adopt and promulgate rules and regulations for the Department of Natural Resources except to the extent such power is statutorily granted to the Nebraska Natural Resources Commission. The director shall administer rules and regulations adopted and promulgated by the commission.

(2) The rules, regulations, and orders of the Director of Water Resources, the Department of Water Resources, and the Nebraska Natural Resources Commission shall remain in effect unless changed or eliminated by the Director of Natural Resources or the Department of Natural Resources or by the commission to the extent such power is statutorily granted to the commission.

Source: Laws 1957, c. 365, § 22, p. 1241; R.S.1943, (1998), § 46-704; Laws 2000, LB 900, § 4.

61-205. Department of Natural Resources; general grant of authority.

The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Department of Water Resources prior to July 1, 2000. The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Nebraska Natural Resources Commission prior to July 1, 2000, except as otherwise specifically provided.

The Director of Natural Resources and his or her duly authorized assistants shall have access at all reasonable times to all dams, reservoirs, hydroelectric plants, water measuring devices, and headgates, and other devices for diverting water, for the purpose of performing the duties assigned to the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 1, p. 834; C.S.1922, § 8420; C.S.1929, § 81-6301; R.S.1943, § 46-208; Laws 1973, LB 186, § 1; R.S.1943, (1998), § 46-208; Laws 2000, LB 900, § 5; Laws 2006, LB 1226, § 29.

Department is the successor of prior boards dealing with irrigation. *State v. Nielsen*, 163 Neb. 372, 79 N.W.2d 721 (1956).

Under former law, Department of Roads and Irrigation exercised powers and functions of former Board of Irrigation. *In re Claim Affidavit of Parsons*, 148 Neb. 239, 27 N.W.2d 190 (1947).

61-206. Department of Natural Resources; jurisdiction; rules and regulations; hearings; orders; powers and duties.

(1) The Department of Natural Resources is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. The department may adopt and promulgate rules and regulations governing matters coming before it. It may refuse to allow any water to be used by claimants until their rights have been determined and made of record. It may request information relative to irrigation and water power works from any county, irrigation, or power officers and from any other persons. It may have hearings on complaints, petitions, or applications in connection with any of such matters. Such hearings shall be had at the time and place designated by the department. The department shall have power to certify official acts, compel attendance of witnesses, take testimony by deposition as in suits at law, and examine books, papers, documents, and records of any county, party, or parties interested in any of the matters mentioned in this section or have such examinations made by its qualified representative and shall make and preserve a true and complete transcript of its proceedings and hearings. If a final decision is made without a hearing, a hearing

shall be held at the request of any party to the proceeding if the request is made within thirty days after the decision is rendered. If a hearing is held at the request of one or more parties, the department may require each such requesting party and each person who requests to be made a party to such hearing to pay the proportional share of the cost of such transcript. Upon any hearing, the department shall receive any evidence relevant to the matter under investigation and the burden of proof shall be upon the person making the complaint, petition, and application. After such hearing and investigation, the department shall render a decision in the premises in writing and shall issue such order or orders duly certified as it may deem necessary.

(2) The department shall serve as the official agency of the state in connection with water resources development, soil and water conservation, flood prevention, watershed protection, and flood control.

(3) The department shall:

(a) Offer assistance as appropriate to the supervisors or directors of any subdivision of government with responsibilities in the area of natural resources conservation, development, and use in the carrying out of any of their powers and programs;

(b) Keep the supervisors or directors of each such subdivision informed of the activities and experience of all other such subdivisions and facilitate cooperation and an interchange of advice and experience between such subdivisions;

(c) Coordinate the programs of such subdivisions so far as this may be done by advice and consultation;

(d) Secure the cooperation and assistance of the United States, any of its agencies, and agencies of this state in the work of such subdivisions;

(e) Disseminate information throughout the state concerning the activities and programs of such subdivisions;

(f) Plan, develop, and promote the implementation of a comprehensive program of resource development, conservation, and utilization for the soil and water resources of this state in cooperation with other local, state, and federal agencies and organizations;

(g) When necessary for the proper administration of the functions of the department, rent or lease space outside the State Capitol; and

(h) Assist such local governmental organizations as villages, cities, counties, and natural resources districts in securing, planning, and developing information on flood plains to be used in developing regulations and ordinances on proper use of these flood plains.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 14, p. 839; C.S.1922, § 8433; C.S.1929, § 81-6314; R.S.1943, § 46-209; Laws 1957, c. 197, § 1, p. 695; Laws 1959, c. 219, § 1, p. 766; Laws 1981, LB 109, § 1; Laws 1984, LB 897, § 2; Laws 1984, LB 1106, § 36; Laws 1991, LB 772, § 4; Laws 1995, LB 350, § 1; R.S.1943, (1998), § 46-209; Laws 2000, LB 900, § 6; Laws 2004, LB 962, § 102; Laws 2008, LB727, § 1; Laws 2019, LB319, § 3.

Effective Date: September 1, 2019

It is proper to join the Department of Natural Resources as a party to a hearing challenging the validity of the department's administration of water. In re 2007 Appropriations of Niobrara River Waters, 283 Neb. 629, 820 N.W.2d 44 (2012).

When relevant to a hearing before the Department of Natural Resources, the issue of abandonment or forfeiture should be heard and decided, regardless of the manner in which the proceeding was initiated. In re 2007 Appropriations of Niobrara River Waters, 283 Neb. 629, 820 N.W.2d 44 (2012).

The Department of Natural Resources does not lose jurisdiction to determine the validity of a power district's appropriation right even if an owner of a superior preference right who is challenging the validity of the power district's right has also initiated condemnation proceedings as outlined in section 70-672. In re 2007 Appropriations of Niobrara River Waters, 278 Neb. 137, 768 N.W.2d 420 (2009).

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re Complaint of Central Neb. Pub. Power, 270 Neb. 108, 699 N.W.2d 372 (2005).

Even in the absence of statutory authority, an administrative agency has the power to reconsider its own decisions. However, except where the motion to reconsider is

one based on newly discovered evidence, the agency's power to reconsider its own order exists only until the aggrieved party files an appeal or the statutory time has expired. A motion to reconsider filed with an administrative agency will not toll the statutory time for seeking judicial review. Where there has been no initial hearing, a motion for a hearing pursuant to this section cannot be considered one for rehearing. City of Lincoln v. Twin Platte NRD, 250 Neb. 452, 551 N.W.2d 6 (1996).

Department of Water Resources has exclusive original jurisdiction to hear and adjudicate all matters pertaining to water rights. Hickman v. Loup River P. P. Dist., 173 Neb. 428, 113 N.W.2d 617 (1962).

Department of Water Resources has exclusive original jurisdiction over application for allowance of water rights. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Department has jurisdiction over cancellation of water rights. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Department cannot by rule extend time allowed to apply water to a beneficial use. North Loup River P. P. & I. Dist. v. Loup River P. P. Dist., 162 Neb. 22, 74 N.W.2d 863 (1956).

Under former law, appeal from decision refusing to cancel water rights on ground of nonuser may be properly taken to district court instead of directly to Supreme Court. State v. Oliver Bros., 119 Neb. 302, 228 N.W. 864 (1930).

61-207. Department of Natural Resources; decisions; appeal; time; procedure.

If any county, party, or parties interested in irrigation or water power work affected thereby are dissatisfied with the decision or with any order adopted, such dissatisfied county, party, or parties may appeal to the Court of Appeals to reverse, vacate, or modify the order complained of. The procedure to obtain such reversal, modification, or vacation of any such decision or order upon which a hearing has been had before the Department of Natural Resources shall be governed by the same provisions in force with reference to appeals and error proceedings from the district court. The evidence presented before the department as reported by its official stenographer and reduced to writing, together with a transcript of the record and pleadings upon which the decision is based, duly certified in such case under the seal of the department, shall constitute the complete record and the evidence upon which the case shall be presented to the appellate court. The time for

perfecting such appeal shall be limited to thirty days after the rendition of such decision or order, and the appellate court shall advance such appeal to the head of its docket.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 15, p. 840; C.S.1922, § 8434; C.S.1929, § 81-6315; R.S.1943, § 46-210; Laws 1961, c. 227, § 1, p. 671; Laws 1973, LB 186, § 2; Laws 1984, LB 897, § 3; Laws 1987, LB 33, § 9; Laws 1991, LB 732, § 105; Laws 1992, LB 360, § 12; R.S.1943, (1998), § 46-210; Laws 2000, LB 900, § 7.

Cross Reference

Actions appealed to Supreme Court, advanced for argument, see section 25-1920.

A motion to reconsider filed with an administrative agency will not toll the statutory time for seeking judicial review. *City of Lincoln v. Twin Platte NRD*, 250 Neb. 452, 551 N.W.2d 6 (1996).

Regarding the granting of water diversion applications, the court's standard of review is to (1) search for errors appearing in the record; (2) determine whether the judgment conforms to law and whether it is supported by competent and relevant evidence; and (3) determine whether the director's action was arbitrary, capricious, or unreasonable. In re Applications A-15145, A-15146, A-15147, and A-15148, 230 Neb. 580, 433 N.W.2d 161 (1988).

The proper standard of review for the Supreme Court to follow in cases involving appeals from the Department of Water Resources under the provisions of this section is to search only for errors appearing in the record. In re Application U-2, 226 Neb. 594, 413 N.W.2d 290 (1987).

The proper standard of review for the Supreme Court to follow in cases involving appeals from the Department of Water Resources under the provisions of this section is to search only for errors appearing in the record; i.e., does the judgment conform to law, is it supported by competent and relevant evidence, and was the action neither arbitrary, capricious, nor unreasonable? To the extent that In re Applications A-15995 and A-16006, 223 Neb. 430, 390 N.W.2d 506 (1986), holds to the contrary, it is overruled. In re Application A-15738, 226 Neb. 146, 410 N.W.2d 101 (1987).

Under former law, appeal lies from final order of Department of Water Resources directly to Supreme Court. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Evidence not offered at hearing has no place in bill of exceptions. *State v. Birdwood Irr. Dist.*, 154 Neb. 52, 46 N.W.2d 884 (1951).

Under former law, the Department of Roads and Irrigation was neither a necessary nor a proper party to a proceeding on appeal to secure a reversal, modification, or vacation of an order made and entered by it. *Cozad Ditch Co. v. Central Nebraska Public Power & Irr. Dist.*, 132 Neb. 547, 272 N.W. 560 (1937).

Under former law, appeal in proceedings before Department of Roads and Irrigation to cancel water right on ground of abandonment from decision refusing cancellation could be properly taken to district court instead of to Supreme Court. *State v. Oliver Bros.*, 119 Neb. 302, 228 N.W. 864 (1930).

The proper standard of review for an appellate court to follow in cases involving appeals from the Department of Water Resources under this section is to search only for errors appearing on the record, i.e., to determine whether the judgment conforms to law, is supported by relevant evidence, and is not arbitrary, capricious, or unreasonable. In re Applications A-17004 et al., 1 Neb. App. 974, 512 N.W.2d 392 (1993).

61-208. Department of Natural Resources; powers; survey of streams.

The Department of Natural Resources may make surveys of streams showing location of possible water power developments and irrigation projects.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 30, p. 845; C.S.1922, § 8449; C.S.1929, § 81-6330; R.S.1943, § 46-212; Laws 1984, LB 897, § 4; R.S.1943, (1998), § 46-212; Laws 2000, LB 900, § 8.

61-209. Department of Natural Resources; powers; water data collection; fee.

The Department of Natural Resources may conduct special projects for water data collection on behalf of other state agencies, political subdivisions, or federal agencies. Such data shall be public information. The department may charge a fee to cover in whole or in part the costs of collecting, analyzing, and publishing the data and such fees shall be deposited in the Department of Natural Resources Cash Fund.

Source: Laws 1983, LB 33, § 1; R.S.1943, (1998), § 46-212.01; Laws 2000, LB 900, § 9.

61-210. Department of Natural Resources Cash Fund; created; use; investment.

The Department of Natural Resources Cash Fund is created. The State Treasurer shall credit to such fund such money as is specifically appropriated or reappropriated by the Legislature. The State Treasurer shall also credit such fund with payments, if any, accepted for services rendered by the department and fees collected pursuant to subsection (6) of section 46-606 and section 61-209. The funds made available to the Department of Natural Resources by the United States, through the Natural Resources Conservation Service of the Department of Agriculture or through any other agencies, shall be credited to the fund by the State Treasurer. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The Department of Natural Resources shall allocate money from the fund to pay costs of the programs or activities of the department. The Director of Administrative Services, upon receipt of proper vouchers approved by the department, shall issue warrants on the fund, and the State Treasurer shall countersign and pay from, but never in excess of, the amounts to the credit of the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

Source: Laws 1937, c. 8, § 13, p. 109; C.S.Supp.,1941, § 2-1913; R.S.1943, § 2-1547; Laws 1959, c. 6, § 25, p. 90; Laws 1969, c. 584, § 28, p. 2358; Laws 1973, LB 188, § 2; Laws 1987, LB 29, § 2; Laws 1995, LB 7, § 6; Laws 1999, LB 403, § 2; R.S.Supp.,1999, § 2-1547; Laws 2000, LB 900, § 10; Laws 2001, LB 667, § 26; Laws 2002, LB 458, § 8; Laws 2005, LB 335, § 81; Laws 2007, LB 701, § 26; Laws 2009, First Spec. Sess., LB 3, § 38.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

61-211. Department of Natural Resources; powers; measuring devices; gauge height reports; requirements; violation; penalty.

The Department of Natural Resources may direct managers or operators of interstate ditches to construct and maintain suitable measuring devices at or near the state line in Nebraska. A manager or operator shall within thirty days after receipt of notice from the department construct and complete installation of such a measuring device and shall furnish daily gauge height reports

to the department from the beginning to the end of the irrigation season, in such form and manner as recommended by the department. Failure of any manager or operator of an interstate ditch to comply with this section shall be a Class V misdemeanor.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 31, p. 846; C.S.1922, § 8450; C.S.1929, § 81-6331; R.S.1943, § 46-213; Laws 1977, LB 40, § 256; Laws 1991, LB 276, § 1; R.S.1943, (1998), § 46-213; Laws 2000, LB 900, § 11.

61-212. Water divisions; denomination.

The State of Nebraska is hereby divided into two water divisions, denominated water division No. 1 and water division No. 2, respectively.

Source: Laws 1895, c. 69, § 1, p. 244; R.S.1913, § 3378; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 10, p. 833; C.S.1922, § 8415; C.S.1929, § 46-510; R.S.1943, § 46-215; R.S.1943, (1998), § 46-215; Laws 2000, LB 900, § 12.

For administrative purposes, state is divided into two water divisions. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

61-213. Water division No. 1; boundaries.

Water division No. 1 shall consist of (1) all the lands of the state drained by the Platte Rivers and their tributaries lying west of the mouth of the Loup River and (2) all other lands lying south of the Platte and South Platte Rivers that may be watered from other superficial or subterranean streams not tributary to the Platte River.

Source: Laws 1895, c. 69, § 2, p. 244; R.S.1913, § 3379; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 11, p. 833; C.S.1922, § 8416; C.S.1929, § 46-511; R.S.1943, § 46-216; R.S.1943, (1998), § 46-216; Laws 2000, LB 900, § 13.

61-214. Water division No. 2; boundaries.

Water division No. 2 shall consist of (1) all lands that may be watered from the Loup, White, Niobrara, and Elkhorn Rivers and their tributaries and (2) all other lands of the state not included in any other water division.

Source: Laws 1895, c. 69, § 3, p. 245; Laws 1911, c. 153, § 2, p. 498; R.S.1913, § 3380; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 12, p. 833; C.S.1922, § 8417; C.S.1929, § 46-512; R.S.1943, § 46-217; R.S.1943, (1998), § 46-217; Laws 2000, LB 900, § 14.

Snake River is within the Niobrara River basin or watershed. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

61-215. Water divisions; division supervisors.

There shall be one or more division supervisors acting for the Department of Natural Resources to administer the public water of the state in the water divisions created by section 61-212. Such a division supervisor, acting for the department, shall have the immediate direction and control of the distribution of water in such manner as directed by the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 3, p. 834; C.S.1922, § 8422; C.S.1929, § 81-6303; R.S.1943, § 46-218; Laws 1953, c. 157, § 1, p. 495; Laws 1987, LB 140, § 2; R.S.1943, (1998), § 46-218; Laws 2000, LB 900, § 15.

61-216. Water divisions; division supervisors; duties.

The division supervisor or supervisors shall, under the direction of the Department of Natural Resources, see that the laws relative to the distribution of water are executed in accordance with the rights of priority of appropriation.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 4, p. 835; C.S.1922, § 8423; C.S.1929, § 81-6304; R.S.1943, § 46-219; Laws 1953, c. 157, § 2, p. 495; R.S.1943, (1998), § 46-219; Laws 2000, LB 900, § 16.

Under former law, Department of Roads and Irrigation was authorized to shut and lock headgates of junior appropriators when there was not sufficient water to supply the needs of senior appropriators. *Platte Valley Irr. Dist. v. Tilley*, 142 Neb. 122, 5 N.W.2d 252 (1942).

Right to shut and lock headgates is not exclusive remedy. *Farmers & Merchants' Irr. Co. v. Cozad Irr. Co.*, 65 Neb. 3, 90 N.W. 951 (1902).

61-217. Repealed. Laws 2010, LB 682, § 1.

61-218. Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.

(1) The Water Resources Cash Fund is created. The fund shall be administered by the Department of Natural Resources. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, (d) made available by any department or agency of the United States if so directed by such department or agency, (e) allocated pursuant to section 81-15,175, and (f) received by the state for settlement of claims regarding Colorado's past use of water under the Republican River Compact.

(3) The fund shall be expended by the department (a) to aid management actions taken to reduce consumptive uses of water or to enhance streamflows or ground water recharge in river basins, subbasins, or reaches which are deemed by the department overappropriated pursuant to section 46-713 or fully appropriated pursuant to section 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement, (b) for purposes of projects or proposals described in the grant application as set forth in subdivision (2)(h) of section 81-15,175, and (c) to the extent funds are not expended pursuant to subdivisions (a) and (b) of this subsection, the department may conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in sections 46-713 to 46-718 and 46-739 and any requirements of an interstate compact or decree or formal state contract or agreement. The fund shall not be used to pay for administrative expenses or any salaries for the department or any political subdivision.

(4) It is the intent of the Legislature that three million three hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2011-12 through FY2022-23, except that for FY2012-13 it is the intent of the Legislature that four million seven hundred thousand dollars be transferred from the General Fund to the Water Resources Cash Fund. It is the intent of the Legislature that the State Treasurer credit any money received from any Republican River Compact settlement to the Water Resources Cash Fund in the fiscal year in which it is received.

(5)(a) Expenditures from the Water Resources Cash Fund may be made to natural resources districts eligible under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement and shall require a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity. The department shall, no later than August 1 of each year, beginning in 2007, determine the amount of funding that will be made available to natural resources districts from the Water Resources Cash Fund and notify natural resources districts of this determination. The department shall adopt and promulgate rules and regulations governing application for and use of the Water Resources Cash Fund by natural resources districts. Such rules and regulations shall, at a minimum, include the following components:

(i) Require an explanation of how the planned activity will achieve a sustainable balance of consumptive water uses or will assure compliance with an interstate compact or decree or a formal state contract or agreement as required by section 46-715 and the controls, rules, and regulations designed to carry out the activity; and

(ii) A schedule of implementation of the activity or its components, including the local match as set forth in subdivision (5)(a) of this section.

(b) Any natural resources district that fails to implement and enforce its controls, rules, and regulations as required by section 46-715 shall not be eligible for funding from the Water Resources Cash Fund until it is determined by the department that compliance with the provisions required by section 46-715 has been established.

(6) The Department of Natural Resources shall submit electronically an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year. The report shall provide:

- (a) Details regarding the use and cost of activities carried out by the department; and
- (b) Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.

(7)(a) Prior to the application deadline for fiscal year 2011-12, the Department of Natural Resources shall apply for a grant of nine million nine hundred thousand dollars from the Nebraska Environmental Trust Fund, to be paid out in three annual installments of three million three hundred thousand dollars. The purposes listed in the grant application shall be consistent with the uses of the Water Resources Cash Fund provided in this section and shall be used to aid management actions taken to reduce consumptive uses of water, to enhance streamflows, to recharge ground water, or to support wildlife habitat in any river basin determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713.

(b) If the application is granted, funds received from such grant shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund for the purpose of supporting the projects set forth in the grant application. The department shall include in its grant application documentation that the Legislature has authorized a transfer of three million three hundred thousand dollars from the General Fund into the Water Resources Cash Fund for each of fiscal years 2011-12 and 2012-13 and has stated its intent to transfer three million three hundred thousand dollars to the Water Resources Cash Fund for fiscal year 2013-14.

(c) It is the intent of the Legislature that the department apply for an additional three-year grant that would begin in fiscal year 2014-15, an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2017-18, and an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2020-21 if the criteria established in subsection (4) of section 81-15,175 are achieved.

(8) The department shall establish a subaccount within the Water Resources Cash Fund for the accounting of all money received as a grant from the Nebraska Environmental Trust Fund as the result of an application made pursuant to subsection (7) of this section. At the end of each calendar month, the department shall calculate the amount of interest earnings accruing to the subaccount and shall notify the State Treasurer who shall then transfer a like amount from the Water Resources Cash Fund to the Nebraska Environmental Trust Fund.

Source: Laws 2007, LB701, § 25; Laws 2009, First Spec. Sess., LB3, § 39; Laws 2010, LB689, § 1; Laws 2010, LB993, § 1; Laws 2011, LB229, § 1; Laws 2012, LB782, § 87; Laws 2012, LB950, § 1; Laws 2017, LB331, § 30; Laws 2018, LB945, § 15; Laws 2019, LB298, § 15.

Effective Date: May 28, 2019

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

61-219. Repealed. Laws 2010, LB 683, § 1.

61-222. Water Sustainability Fund; created; use; investment.

The Water Sustainability Fund is created in the Department of Natural Resources. The fund shall be used in accordance with the provisions established in Laws 2014, LB1098, and for costs directly related to the administration of the fund.

The fund shall consist of money transferred to the fund by the Legislature, other funds as appropriated by the Legislature, and money donated as gifts, bequests, or other contributions from public or private entities. Funds made available by any department or agency of the United States may also be credited to the fund if so directed by such department or agency. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

It is the intent of the Legislature that twenty-one million dollars be transferred from the General Fund to the Water Sustainability Fund in fiscal year 2014-15 and that eleven million dollars be transferred from the General Fund to the Water Sustainability Fund each fiscal year beginning in fiscal year 2015-16. It is the intent of the Legislature that three million dollars be transferred annually from the Water Sustainability Fund to the Nebraska Resources Development Fund in FY2015-16 and in FY2016-17.

Source: Laws 2014, LB 906, § 7; Laws 2015, LB 661, § 31.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

61-223. Water Sustainability Fund; legislative intent.

The Legislature finds that water sustainability programs, projects, and activities are complex, multiyear endeavors that require a stable source of state funding support in order for the required matching funds to be secured and for projects to be completed in a timely and successful manner. It is the intent of the Legislature that transfers of money from the General Fund to the Water Sustainability Fund be maintained at the level established in section 61-222 for a minimum of ten fiscal years.

Source: Laws 2015, LB 661, § 20.

61-224. Critical Infrastructure Facilities Cash Fund; created; use; investment; transfers.

There is hereby created the Critical Infrastructure Facilities Cash Fund in the Department of Natural Resources. The fund shall consist of funds appropriated or transferred by the Legislature.

The fund shall be used by the Department of Natural Resources to provide a grant to a natural resources district to offset costs related to soil and water improvements intended to protect critical infrastructure facilities within the district which includes military installations, transportation routes, and wastewater treatment facilities. Transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer three hundred eighty-four thousand two hundred twenty-two dollars plus any accrued interest through April 5, 2018, from the Critical Infrastructure Facilities Cash Fund to the General Fund on or before June 30, 2019, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. Any money in the Critical Infrastructure Facilities Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, and any interest earned by the fund shall be credited to the General Fund.

Source: Laws 2016, LB957, § 21; Laws 2018, LB945, § 16.

Effective Date: April 5, 2018.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

CHAPTER 2

ARTICLE 46

EROSION AND SEDIMENT CONTROL ACT

2-4601. Act, how cited.

Sections 2-4601 to 2-4613 shall be known and may be cited as the Erosion and Sediment Control Act.

Source: Laws 1986, LB 474, § 1.

2-4602. Legislative findings.

The Legislature recognizes that erosion and sedimentation are serious problems throughout the state. Changes in farm and ranch enterprises, operations, and ownership, demands made upon farm and ranch enterprises which do not encourage sound resource utilization, rapid shifts in land use from agricultural and rural to nonagricultural and urban uses, construction of streets, highways, pipelines, recreation areas, schools and universities, public utilities and facilities, conversion of grasslands to croplands, and other land-disturbing activities have caused excessive wind erosion and water runoff and accelerated the process of soil erosion and sediment deposition. This has resulted in the pollution of the waters of the state and damage to domestic, agricultural, industrial, recreational, fish and wildlife, and other resources. It is declared to be the policy of the state to strengthen and extend the present erosion and sediment control activities and programs of the state for both rural and urban lands, to improve water quality, and to establish and implement, through the Director of Natural Resources and the Nebraska Natural Resources Commission, a statewide, comprehensive, and coordinated erosion and sediment control program to reduce damage from wind erosion and storm water runoff, to retard nonpoint pollution from sediment and related pollutants, and to conserve and protect land, air, and other resources of the state. This program shall be carried out by the natural resources districts in cooperation with the counties, municipalities, and other local governments and political subdivisions of the state and other public and private entities.

Source: Laws 1986, LB 474, § 2.

2-4603. Terms, defined.

For purposes of the Erosion and Sediment Control Act, unless the context otherwise requires:

(1) Commission shall mean the Nebraska Natural Resources Commission;

(2) Conservation agreement shall mean an agreement between the owner or operator of a farm unit and the district in which the owner or operator agrees to implement a farm unit conservation plan or, with the approval of the district within which the farm unit is located, a portion of a farm

unit conservation plan. The agreement shall include a schedule for implementation and may be conditioned on the district or other public entity furnishing technical, planning, or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan or a portion of the plan;

(3) Director shall mean the Director of Natural Resources;

(4) District shall mean a natural resources district;

(5) Erosion or sediment control practice shall mean:

(a) The construction or installation and maintenance of permanent structures or devices necessary to carry, to a suitable outlet away from any building site, any commercial or industrial development, or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil-loss limit and which does not carry or constitute sewage or industrial or other waste;

(b) The employment of temporary devices or structures, temporary seeding, fiber mats, plastic, straw, diversions, silt fences, sediment traps, or other measures adequate either to prevent erosion in excess of the applicable soil-loss limit or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any nonagricultural land-disturbing activity; or

(c) The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, or highway or the construction or installation thereon of permanent structures or devices or other measures adequate to prevent erosion of the right-of-way in excess of the applicable soil-loss limit;

(6) Farm unit conservation plan shall mean a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the district within which the farm unit is located based upon the determined conservation needs for the farm unit and identifying the soil and water conservation practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil-loss limit. The plan may also, if practicable, identify alternative practices by which such objective may be attained;

(7) Nonagricultural land-disturbing activity shall mean a land change, including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land, which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state but shall not include the following:

(a) Activities related directly to the production of agricultural, horticultural, or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;

(b) Installation of aboveground public utility lines and connections, fenceposts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;

(c) Emergency work to protect life or property; and

(d) Activities related to the construction of housing, industrial, and commercial developments on sites under two acres in size;

(8) Person shall mean any individual, partnership, limited liability company, firm, association, joint venture, public or private corporation, trust, estate, commission, board, institution, utility,

cooperative, municipality or other political subdivision of this state, interstate body, or other legal entity;

(9) Soil and water conservation practice shall mean a practice which serves to prevent erosion of soil by wind or water in excess of the applicable soil-loss limit from land used only for agricultural, horticultural, or silvicultural purposes. Soil and water conservation practice shall include, but not be limited to:

(a) Permanent soil and water conservation practice, including the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, and other permanent soil and water practices approved by the district; and

(b) Temporary soil and water conservation practice, including the planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and other cultural practices approved by the district; and

(10) Soil-loss limit shall mean the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is determined to be acceptable in accordance with the Erosion and Sediment Control Act.

Source: Laws 1986, LB 474, § 3; Laws 1988, LB 594, § 1; Laws 1993, LB 121, § 80; Laws 1994, LB 480, § 22.

2-4604. State program; director; duties; program contents; approval; revisions.

(1) The director shall, in cooperation with the commission, the Department of Environmental Quality, and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program designed to reduce soil erosion in this state to tolerable levels. The program, which shall be reasonable and attainable, shall include:

(a) The soil-loss limits for the various types of soils in the state;

(b) State goals and a state strategy for reducing soil losses on all lands in the state to an amount no more than the applicable soil-loss limit;

(c) Guidelines for establishing priorities for implementation of the program at the state and local levels;

(d) Types of assistance to be provided by the state to districts, cities, and counties in the implementation of the state and local erosion and sediment control programs; and

(e) Such other elements as the director deems appropriate in accordance with the objectives of the Erosion and Sediment Control Act, including any recommendations for further legislative or administrative action.

(2) The state erosion and sediment control program shall be subject to the approval of the commission. It shall be presented to the Governor and the Legislature no later than January 1, 1987. Before approving the final program, the director and the commission shall conduct at least four public hearings or meetings to receive information from interested persons in different parts of the state.

(3) The state erosion and sediment control program may be revised by the director and the commission at any time, except that such revisions shall be made according to the procedures required for approval of the original program.

Source: Laws 1986, LB 474, § 4; Laws 1993, LB 3, § 5.

2-4605. District program; contents; review.

(1) Each district shall, with the approval of the director and on or before July 1, 1987, adopt a district program for implementation of the state erosion and sediment control program. Each district's program shall include the:

(a) Soil-loss limits for the various types of soils in the district. The soil-loss limits shall be adopted and promulgated as rules and regulations and may be more but not less stringent than those adopted by the director. It is the intent of the Legislature that no land within the state be assigned a soil-loss limit that cannot reasonably be applied to such land;

(b) Recommended erosion or sediment control practices and soil and water conservation practices which are suitable for controlling erosion and sedimentation within the district; and

(c) Programs, procedures, and methods the district plans to adopt and employ to implement the state erosion and sediment control program. Each district may subsequently amend or modify the program as necessary, subject to the approval of the director.

(2) The director with the advice and recommendation of the commission shall review each district's program and all amendments thereto and shall approve the program or amendments if the director determines that the district's program is reasonable, attainable, and in conformance with the state erosion and sediment control program.

Source: Laws 1986, LB 474, § 5; Laws 1988, LB 594, § 2.

2-4606. Municipal or county rules and regulations; authorized; conformance with state program; enforcement; failure to conform, effect.

Any municipality or county may adopt and promulgate rules and regulations governing erosion and sediment control within their respective jurisdictions. Any such municipal or county rules and regulations shall be in substantial conformance with the state erosion and sediment control program. If a municipality or county adopts and promulgates rules and regulations, it shall enforce such rules and regulations within the regulatory jurisdiction of such municipality or county. Whenever the rules and regulations of any municipality or county are deemed by the director not to be in substantial conformance with the state erosion and sediment control program, the municipality or county may either amend such rules and regulations to conform,

adopt rules and regulations which are in conformance, or defer responsibility to adopt, administer, and enforce such rules and regulations to the appropriate district.

Source: Laws 1986, LB 474, § 6.

2-4607. District; adoption or revision of rules and regulations; procedure; availability.

Before adopting or revising its rules and regulations, each district shall, after publishing notice once each week for three consecutive weeks in a newspaper or newspapers having general circulation within the district, conduct a public hearing on the proposed rules and regulations or changes. The rules and regulations of the district shall be made available for public inspection at the principal office of the district.

Source: Laws 1986, LB 474, § 7.

2-4608. Excessive soil erosion; complaint; inspection; remedial action; failure to comply.

(1) Except to the extent jurisdiction has been assumed by a municipality or county in accordance with section 2-4606, the district may inspect or cause to be inspected any land within the district upon receipt of a written and signed complaint which alleges that soil erosion is occurring in excess of the applicable soil-loss limit. Complaints shall be filed on a form provided by the director. Complaints may be filed by any owner or operator of land being damaged by sediment, by any state agency or political subdivision whose roads or other public facilities are being damaged by sediment, by any state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality, or by a staff member or other agent of the district authorized by the board of directors to file such complaints. Inspections following receipt of a written and signed complaint may be made only after notice to the owner and, if appropriate, the operator of the land involved, and such person shall be given an opportunity to accompany the inspector.

(2) The owner, the operator if appropriate, and the district may agree to a plan and schedule for eliminating excessive erosion on and sedimentation from the land involved. Any such agreement may be enforced in district court in the same manner as an administrative order issued pursuant to the Erosion and Sediment Control Act. If no agreement is reached, the findings of the inspection shall be presented to the district board of directors and the owner and, if appropriate, the operator of the land shall be given a reasonable opportunity to be heard at a meeting of the board or, if requested, at a public hearing. If the district finds that the alleged sediment damage is occurring and that excess soil erosion is occurring on the land inspected, it shall issue an administrative order to the owner of record and, if appropriate, to the operator describing the land and stating as nearly as possible the extent to which the soil erosion exceeds the applicable soil-loss limit. When the complained-of erosion is the result of agricultural, horticultural, or silvicultural activities, the district shall direct the owner and, if appropriate, the operator to bring the land into conformance with the applicable soil-loss limit. When the complained-of erosion is the result of a nonagricultural land-disturbing activity, the district may authorize the owner and, if

appropriate, the operator to either bring such land into conformance with the soil-loss limit or to prevent sediment resulting from excessive erosion from leaving such land.

(3) The district may specify, as applicable, alternative soil and water conservation practices or erosion or sediment control practices which the owner and, if appropriate, the operator may use to comply with the administrative order. A copy of the administrative order shall be delivered by either personal service or certified or registered mail to each person to whom it is directed and shall:

(a) In the case of erosion occurring on the site of any nonagricultural land-disturbing activity, state a reasonable time after service or mailing of the order when the work necessary to establish or maintain erosion or sediment control practices shall be commenced and the time, not more than forty-five days after service or mailing of the order, when the work shall be satisfactorily completed;

(b) In all other cases, state the time, not more than six months after service or mailing of the order, the work needed to establish or maintain the necessary soil and water conservation practices or permanent erosion control practices shall be commenced and the time, not more than one year after the service or mailing of the order, the work shall be satisfactorily completed, unless the requirements of the order are superseded by section 2-4610; and

(c) State any reasonable requirements regarding the operation, utilization, and maintenance of the practices to be installed, constructed, or applied.

(4) Upon failure to comply with the order, the owner or, if appropriate, the operator shall be deemed in violation of the Erosion and Sediment Control Act and subject to further actions as provided by such act.

Source: Laws 1986, LB 474, § 8; Laws 1988, LB 594, § 3; Laws 1994, LB 480, § 23.

A landowner, who was required to implement conservation measures on his land, did not have standing to sue a city in an inverse condemnation action where the city filed a complaint

under this section but the natural resources district was responsible for prosecuting the complaint. *Strom v. City of Oakland*, 255 Neb. 210, 583 N.W.2d 311 (1998).

2-4609. Filing of complaint; effect.

The filing of a complaint shall not preclude the complainant from pursuing any other remedy available to the complainant under the Erosion and Sediment Control Act, other law, or equity.

Source: Laws 1986, LB 474, § 9.

2-4610. Conformance with farm unit conservation plan or soil-loss limit; effect; lack of cost-sharing assistance; effect; cost-sharing assistance; availability.

(1) Any person owning or operating private agricultural, horticultural, or silvicultural lands who has a farm unit conservation plan approved by the district and is implementing and maintaining the plan in strict compliance with a conservation agreement or any person whose normal agricultural, horticultural, and silvicultural practices are in conformance with the applicable soil-loss limit shall, for purposes of such land, be deemed to be in compliance with the

requirements of the Erosion and Sediment Control Act and any approved erosion and sediment control program.

(2) If there is not available to any owner or operator at least ninety percent cost-sharing assistance for the installation of permanent soil and water conservation practices which are required in an approved farm unit conservation plan or are required to conform agricultural, horticultural, and silvicultural practices to the applicable soil-loss limit, any such owner or operator shall not be required to install such practices pursuant to the Erosion and Sediment Control Act until such cost-sharing assistance is made available, except that such owner or operator may agree to a cost-share rate of less than ninety percent. To be enforceable, any agreement providing for cost-sharing assistance at a rate of less than ninety percent shall include notice that the owner or operator may choose not to sign such agreement and that such choice will preserve the right to not less than ninety percent cost-sharing assistance before any permanent soil and water conservation practices can be required by the district. The owner or operator may be required to utilize temporary soil and water conservation practices in the interim to minimize soil erosion and sediment damage.

(3) To prevent excessive erosion and sediment from leaving the land due to any nonagricultural land-disturbing activity, cost-sharing assistance may be available from any district. Such assistance may be used for any erosion or sediment control practice.

Source: Laws 1986, LB 474, § 10; Laws 1988, LB 594, § 4; Laws 1994, LB 480, § 24.

2-4611. Administrative order; appeal.

Any owner or operator served with an administrative order of a district may, within thirty days after service of the administrative order, appeal to the district court in the county in which a majority of the land is located. The appeal shall be de novo and shall be conducted in accordance with section 2-4613.

Source: Laws 1986, LB 474, § 11.

2-4612. Order for immediate compliance; when authorized.

The district shall petition the district court for a court order requiring immediate compliance with the administrative order previously issued by the district if:

(1) The work necessary to comply with the administrative order is not commenced on or before the date specified in such order or in any supplementary orders subsequently issued unless, in the judgment of the district, the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person to whom such order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time;

(2) The work is not being performed with due diligence or is not satisfactorily completed by the date specified in the administrative order or the practices are not being operated, utilized, or maintained as required;

(3) The work is not of a type or quality specified by the district and, when completed, it will not or does not reduce soil erosion from such land below the soil-loss limit or, to the extent excessive erosion is permitted by the district for a nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from such excessive erosion from leaving the land involved; or

(4) The person to whom the administrative order is directed advises the district that he or she does not intend to commence or complete such work.

Source: Laws 1986, LB 474, § 12; Laws 1988, LB 594, § 5.

2-4613. District court action; procedures; order; appeal; failure to comply with order; effect.

In the district court action, the burden of proof shall be upon the district to show that soil erosion is occurring in excess of the applicable soil-loss limit and that the landowner or operator has not established or maintained soil and water conservation practices or erosion or sediment control practices in compliance with the district's erosion and sediment control program. Upon receiving satisfactory proof, the court shall issue an order directing the owner or operator to comply with the administrative order previously issued by the district. The court may modify the administrative order if deemed necessary. Notice of the court order shall be given by either personal service or certified or registered mail to each person to whom the order is directed, who may, within thirty days from the date of the court order, appeal to the Court of Appeals. Any person who fails to comply with the court order issued within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and punished accordingly.

Source: Laws 1986, LB 474, § 13; Laws 1991, LB 732, § 10.

CHAPTER 46

ARTICLE 14

DECOMMISSIONING FUND

46-1401. Legislative findings and intent.

The Legislature finds that accelerating the decommissioning of illegal water wells will be an asset to the State of Nebraska and good for the general welfare of the citizens of the state. The Legislature further finds that completing such decommissioning can be most appropriately accomplished by accelerating state financial input into the efforts currently being conducted. It is therefor the intent of the Legislature to embark upon an accelerated program for the decommissioning of Nebraska's illegal water wells and to recommend that the State of Nebraska and the Legislature annually appropriate ninety-nine thousand dollars from the General Fund to carry out this accelerated program during the years required for its completion.

Source: Laws 1994, LB 981, § 2; Laws 2000, LB 900, § 237.

46-1402. Definitions, where found.

For purposes of sections 46-1401 and 46-1403 to 46-1405, the definitions found in sections 46-1206.01, 46-1207.01, 46-1209, 46-1212, and 46-1213 shall be used.

Source: Laws 1994, LB 981, § 5.

46-1403. Water Well Decommissioning Fund; created; use; investment.

There is hereby created the Water Well Decommissioning Fund. The State Treasurer shall credit to the fund for the uses and purposes of sections 46-1401 to 46-1405 such money as is specifically appropriated and such funds, fees, donations, gifts, services, or devises or bequests of real or personal property received by the Department of Natural Resources from any source, federal, state, public, or private, to be used by the department for the purpose of accelerating the decommissioning of illegal water wells. The department shall allocate money from the fund for purposes of sections 46-1401 to 46-1405. The fund shall be exempt from provisions relating to lapsing of appropriations. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Water Well Decommissioning Fund available for

investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 981, § 3; Laws 1995, LB 7, § 44; Laws 2000, LB 900, § 238; Laws 2009, First Spec. Sess., LB 3, § 22.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

46-1404. Water Well Decommissioning Fund; allocation; rules and regulations.

The Water Well Decommissioning Fund shall be allocated by contractual agreement with natural resources districts for the purpose of accelerating the decommissioning of illegal water wells throughout the state. The allocations each fiscal year shall be made by the Department of Natural Resources to natural resources districts in a proportion based on the number of illegal water wells decommissioned in each district in the previous fiscal year which were part of the district's cost-share program to the total number of illegal water wells decommissioned in the state in the previous fiscal year which were part of a district cost-share program. Subsequent allocations for any district which has had a cost-share program for three or more consecutive years shall be based upon the previous three-year average. The allocations may be adjusted on or after March 1 of any year if the Director of Natural Resources determines that one or more districts cannot reasonably be expected to use their full allocation for that fiscal year. Actual disbursement to each district shall be on a reimbursement basis and shall not exceed the amount expended by the district consistent with sections 46-1401 to 46-1405. The Nebraska Natural Resources Commission shall adopt and promulgate rules and regulations to carry out such sections.

Source: Laws 1994, LB 981, § 4; Laws 2000, LB 900, § 239; Laws 2006, LB 508, § 9.

46-1405. Natural resources district; cost-sharing program; qualification for funding.

Any natural resources district cost-sharing program for decommissioning illegal water wells may qualify for funding pursuant to section 46-1404 if the program:

(1) Applies only to water wells properly decommissioned by licensed water well contractors and pump installation contractors;

(2) Applies to all water wells in the district;

(3) Is available for at least thirty water wells per year; and

(4) Provides at least sixty percent of the costs of decommissioning, up to a maximum of five hundred dollars for all water wells other than hand-dug water wells which shall be eligible for up to a maximum of seven hundred dollars.

A natural resources district may establish maximum cost-share assistance amounts that will be provided to landowners for decommissioning water wells based on well depths and diameters to insure that landowners will be compensated for at least sixty percent of the cost of water well decommissioning.

Source: Laws 1994, LB 981, § 1; Laws 1995, LB 871, § 7; Laws 1996, LB 1241, § 9; Laws 2006, LB 508, § 10.

CHAPTER 2

ARTICLE 9

RIPARIAN VEGETATION MANAGEMENT TASK FORCE

2-967. Repealed. Laws 2016, LB 1038, § 19.

2-968. Repealed. Laws 2016, LB 1038, § 19.

CHAPTER 2

ARTICLE 15

DATA BANK

2-1568. Department; data bank; establish; maintain; administer; available to other agencies.

The department shall maintain and administer a data bank in the field of soil and water resources in the State of Nebraska. The collection of basic data and necessary interpretations of these data in the area of soil and water resources by agencies, departments, and political subdivisions of the State of Nebraska shall not be affected by this section. Such data and necessary interpretations of them shall be made available to the department for inclusion in the data bank when published or earlier if deemed by the originator to be suitable for inclusion. The source of data shall be identified in the data bank and when appropriate shall be associated with subsequent publication or other use. Processing and interpretation of the basic data shall be carried out by the department, except that this section does not preclude the independent processing and interpretation of such data by the collecting agency or other agencies. The resources of the data bank shall be made available to all interested agencies and persons.

Source: Laws 1969, c. 382, § 1, p. 1348; Laws 2000, LB 900, § 24; Laws 2005, LB 342, § 1.

Cross Reference

Intergovernmental Data Communications Advisory Council, see section 86-539.

2-1569. Basic data, defined.

For purposes of section 2-1568, basic data means recorded observations, calculations, or other information concerning: (1) Climatological, meteorological, hydrologic, hydraulic, topographic, and geologic conditions and phenomena, including soils and land use, as these relate to or affect surface and ground water resources, developed water supplies, water demands, and hydraulic structures; (2) occurrence, quantity, and quality of surface water resources, including variations with time, both short term and long range; (3) occurrence, quantity, and quality of ground water resources, including variations with time, natural and artificial recharge, natural and artificial disposal, and information as to the hydraulic characteristics of underground aquifers and reservoirs; (4) sediment production, transport, and disposition; (5) biologic data for streams, lakes, and reservoirs; (6) water rights; (7) occurrence, types, locations, and amounts of consumptive and nonconsumptive uses and demands for water, including diversions and extractions therefor, and variations over time; (8) occurrence, quantity, and quality of waste discharges and return flows, and variations thereof over time; (9) locations, characteristics, and operational criteria of works constructed to store, replenish, regulate, divert, extract, transport, distribute, protect, and improve surface and ground water resources; (10) project and facility operation data; (11) demographic data; and (12) economic and fiscal information.

Source: Laws 1969, c. 382, § 2, p. 1349; Laws 2005, LB 342, § 2.

CHAPTER 2

ARTICLE 15

WATER PLANNING AND REVIEW PROCESS

2-1599. Statement of purpose.

In order to provide for the effective conservation and management of Nebraska's water resources, the Legislature hereby endorses the concept of a state water planning and review process. The purpose of this planning process shall be to coordinate and direct the planning efforts of the state agencies and university divisions with responsibilities and interest in the water resources field. This interagency planning process shall be designed to: (1) Provide the Legislature and the citizens of Nebraska with information and alternative methods of addressing important water policy issues and areawide or statewide water resources problems; (2) provide coordinated interagency reviews of proposed local, state, and federal water resources programs and projects; (3) develop and maintain the data, information, and analysis capabilities necessary to provide state agencies and other water interests with a support base for water planning and management activities; (4) provide the state with the capacity to plan and design water resources projects; and (5) conduct any other planning activities necessary to protect and promote the interests of the state and its citizens in the water resources of Nebraska.

Source: Laws 1981, LB 326, § 1; R.S.Supp.,1982, § 2-3282.

2-15,100. Water planning and review; how conducted; assistance.

The state water planning and review process shall be conducted under the guidance and general supervision of the director. The director shall be assisted in the state water planning and review process by the Game and Parks Commission, the Department of Agriculture, the Governor's Policy Research Office, the Department of Health and Human Services, the Department of Environmental Quality, the Water Center of the University of Nebraska, and the Conservation and Survey Division of the University of Nebraska. In addition, the director may obtain assistance from any private individual, organization, political subdivision, or agency of the state or federal government.

Source: Laws 1981, LB 326, § 2; R.S.Supp.,1982, § 2-3283; Laws 1984, LB 1106, § 38; Laws 1993, LB 3, § 2; Laws 1996, LB 1044, § 37; Laws 2000, LB 900, § 43; Laws 2007, LB 296, § 16.

2-15,101. Appropriations; procedure.

Appropriations may be made to the department for all or part of the costs incurred by agencies other than the department in conducting the state water planning and review process. The state budget administrator shall create a separate budget program within each agency that is to receive a portion of such appropriations. To properly account for such funds, recipients shall submit to the

department, in the form prescribed by the department, documentation of all costs incurred in rendering services determined by the department to be eligible for reimbursement.

Source: Laws 1981, LB 326, § 3; R.S.Supp.,1982, § 2-3284; Laws 2000, LB 900, § 44.

2-15,102. Repealed. Laws 1985, LB 102, § 22.

2-15,103. Commission; duties.

The commission shall provide the director and the Legislature upon request with the opinion of the general public and various water interests in the state. It is the intent of the Legislature that the commission consider the different opinions of the individual members but, as a body, it shall provide the director with input and comments on state water planning and review process activities as they relate to the overall use of Nebraska's water resources. The functions of the commission shall include providing upon request advice and assistance in the planning process by: (1) Identifying legislative and administrative policy issues; (2) developing and reviewing alternative solutions for legislative and administrative policy problems, including impact assessment; (3) recommending the types of problems needing analysis and where such problems are located or likely to be located; (4) disseminating information and materials generated by the planning process to the public; (5) determining the conditions under which and the methods by which additional public input is to be obtained; and (6) reviewing and commenting on reports produced through the planning process.

Source: Laws 1981, LB 326, § 5; R.S.Supp.,1982, § 2-3286; Laws 1984, LB 1106, § 39; Laws 2000, LB 900, § 45.

2-15,104. Repealed. Laws 2000, LB 900, § 256.

2-15,105. Public hearings; materials; made available to public.

It is the intent of the Legislature that the public have maximum input into the formulation of state water policy. The director shall conduct one or more public hearings prior to the completion of any recommendations to the Legislature on methods of addressing water policy issues. All materials produced as part of the state water planning and review process shall be available to interested persons and groups upon request. The department or other agency providing such material may make a charge therefor which does not exceed the actual cost of providing the same.

Source: Laws 1981, LB 326, § 7; R.S.Supp.,1982, § 2-3288; Laws 1984, LB 1106, § 41; Laws 2000, LB 900, § 46.

2-15,106. Annual report; contents.

On or before September 15 for each odd-numbered year and on or before the date provided in section 81-132 for each even-numbered year, the director shall submit an annual report and plan of work for the state water planning and review process to the Legislature and Governor. The report submitted to the Legislature shall be submitted electronically. The report shall include a

listing of expenditures for the past fiscal year, a summary and analysis of work completed in the past fiscal year, funding requirements for the next fiscal year, and a projection and analysis of work to be completed and estimated funding requirements for such work for the next succeeding four years. The explanation of future funding requirements shall include an explanation of the proposed use of such funds and the anticipated results of the expenditure of such funds. The report shall, to the extent possible, identify such information as it affects each agency or other recipient of program funds. The explanation of future funding requirements shall be in a form suitable for providing an explanation of that portion of the budget request pertaining to the state water planning and review process.

Source: Laws 1981, LB 326, § 8; R.S.Supp.,1982, § 2-3289; Laws 1984, LB 1106, § 42; Laws 2000, LB 900, § 47; Laws 2002, Second Spec. Sess., LB 12, § 1; Laws 2012, LB 782, § 4.

CHAPTER 2

ARTICLE 26

PESTICIDE ACT

2-2626. Department; powers and duties.

The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Department of Natural Resources, or the Department of Health and Human Services, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health and Human Services shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2006. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health and Human Services pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under section 136p of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or

misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. 171, as the regulation existed on January 1, 2006; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under section 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any application equipment, building, or place owned, controlled, or operated by any person engaging in an activity regulated by the act if, from probable cause, it appears that the application equipment, building, or place contains a pesticide;

(6) To sample, inspect, make analysis of, and test any pesticide found within this state;

(7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(9) To impose or levy an administrative fine of not more than five thousand dollars on any person who has violated the provisions, requirements, conditions, limitations, or duties imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means any separate activity or day in which an activity takes place;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take measures necessary to ensure that all fees, fines, and penalties prescribed by the act and the rules or regulations adopted under the act are assessed and collected;

(12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

(13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(14) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;

(15) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(16) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(17) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(18) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(19) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(20) To issue a cease and desist order pursuant to section 2-2649;

(21) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(22) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(23) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB 296, § 17; Laws 2010, LB 254, § 7.

CHAPTER 2

ARTICLE 32

WATER CONTINGENCY CASH FUND

2-3226.06. Payment to water rights holders; authorized.

The Legislature finds that water rights holders who lease and forego water use to assist in the management, protection, and conservation of the water resources of river basins must be paid. It is the intent of the Legislature to provide payment to such water rights holders through the financial assistance provided in section 2-3226.07. The Legislature further finds that the financial assistance provided by the state under such section shall be repaid through the authority granted under Laws 2007, LB 701, or such other means as are provided by the Legislature.

Source: Laws 2008, LB 1094, § 4.

Effective date: April 2, 2008.

2-3226.07. Water Contingency Cash Fund; created; investment; natural resources district; financial assistance; request to department; compensation to water rights holders.

(1) The Water Contingency Cash Fund is created. The department shall administer the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) No later than five days after April 2, 2008, a natural resources district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin, and such natural resources district, using authority granted under Laws 2007, LB 701, enters or has entered into agreements, shall submit a request in writing to the department certifying the amount of financial assistance necessary to meet its obligations under section 2-3226.04 by or through obligations of joint entities or joint public agencies formed for the purposes described in section 2-3226.01. Within fifteen days after April 2, 2008, if such a request has been received by the department, the department shall expend from the Water Contingency Cash Fund the amount requested to provide financial assistance to the submitting natural resources district. The natural resources district shall use the financial assistance provided by the state from the Water Contingency Cash Fund to compensate water rights holders who agree or have agreed to lease and forgo the use of water. Any financial assistance provided under this section not used for such purpose by the

natural resources district within sixty days after it is received by such district shall be returned to the department for credit to the Water Contingency Cash Fund.

Source: Laws 2008, LB 1094, § 5.
Effective date: April 2, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

2-3226.08. Financial assistance; district; repayment; duties.

(1) Any district receiving financial assistance pursuant to section 2-3226.07 shall remit to the department the proceeds of the property tax authorized pursuant to subdivision (1)(d) of section 2-3225, the proceeds of the occupation tax authorized pursuant to section 2-3226.05, or both, when such proceeds are available for distribution until the amount of such financial assistance has been repaid. Such proceeds shall be remitted within fifteen days after receipt of the proceeds by the district.

(2) If the district does not receive proceeds described in subsection (1) of this section, the district shall reimburse the Water Contingency Cash Fund by such means as are provided by the Legislature. Such reimbursement shall be made no later than June 30, 2013.

Source: Laws 2008, LB 1094, § 6.
Effective date: April 2, 2008.

2-3226.09. Department; State Treasurer; duties.

The department shall remit reimbursements received pursuant to section 2-3226.08 to the State Treasurer for credit to the Water Contingency Cash Fund. The department shall calculate the amount of such reimbursements so remitted. After the initial disbursement of financial assistance by the department as authorized in section 2-3226.07, the State Treasurer shall, at the end of each calendar month, transfer the balance of the Water Contingency Cash Fund to the Cash Reserve Fund.

Source: Laws 2008, LB 1094, § 7.
Effective date: April 2, 2008.

CHAPTER 2

ARTICLE 32

IMPROVEMENT PROJECT AREAS

2-3254. Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.

(1) The board shall hold a hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the establishment of or altering the boundaries of an existing improvement project area and the undertaking of such a project, upon the question of the appropriate boundaries describing affected land, upon the propriety of the petition, and upon all relevant questions regarding such inquiries. When a hearing has been initiated by petition, such hearing shall be held within one hundred twenty days of the filing of such petition. Notice of such hearing shall be published prior thereto once each week for three consecutive weeks in a legal newspaper published or of general circulation in the district. Landowners within the limits of the territory described in the petition and all other interested parties, including any appropriate agencies of state or federal government, shall have the right to be heard. If the board finds, after consultation with such appropriate agencies of state and federal government and after the hearing, that the project conforms with all applicable law and with the district's goals, criteria, and policies, it shall enter its findings in the board's official records and shall, with the aid of such engineers, surveyors, and other assistants as it may have chosen, establish an improvement project area or alter the boundaries of an existing improvement project area, proceed to make detailed plans and cost estimates, determine the total benefits, and carry out the project as provided in subsections (2) and (3) of this section. If the board finds that the project does not so conform, the findings shall be entered in the board's records and copies of such findings shall be furnished to the petitioners and the commission.

(2) When any such special project would result in the provision of revenue-producing continuing services, the board shall, prior to commencement of construction of such project, determine, by circulation of petitions or by some other appropriate method, if such project can be reasonably expected to generate sufficient revenue to recover the reimbursable costs thereof. If it is determined that the project cannot be reasonably expected to generate sufficient revenue, the project and all work in connection therewith shall be suspended. If it is determined that the project can be reasonably expected to generate sufficient revenue, the board shall divide the total benefits of the project as provided in sections 2-3252 to 2-3254. If the proposed project involves the supply of water for any beneficial use, all plans and specifications for the project shall be filed with the secretary of the district and the Director of Natural Resources, except that if such project involves a public water system as defined in section 71-5301, the filing of the information shall be with the Department of Health and Human Services rather than the Director of Natural Resources. No construction of any such special project shall begin until the plans and specifications for such improvement have been approved by the Director of Natural Resources and the Department of Health and Human Services, if applicable, except that if such special project involves a public water system as defined in section 71-5301, only the Department of Health and Human Services

shall be required to review such plans and specifications and approve the same if in compliance with the Nebraska Safe Drinking Water Act and departmental rules and regulations adopted and promulgated under the act. All prescribed conditions having been complied with, each landowner within the improvement project area shall, within any limits otherwise prescribed by law, subscribe to a number of benefit units in proportion to the extent he or she desires to participate in the benefits of the special project. As long as the capacity of the district's facilities permit, participating landowners may subscribe to additional units, within any limits otherwise prescribed by law, upon payment of a unit fee for each such unit. The unit fees made and charged pursuant to this section shall be levied and fixed by rules and regulations of the district. The service provided may be withheld during the time such charges levied upon such parcel of land are delinquent and unpaid. Such charges shall be cumulative, and the service provided by the project may be withheld until all delinquent charges for the operation and maintenance of such works of improvement are paid for past years as well as for the current year. All such charges, due and delinquent according to the rules and regulations of such district and unpaid on June 1 after becoming due and delinquent, may be certified by the governing authority of such district to the county clerk of such county in which are situated the lands against which such charges have been levied, and when so certified such charges shall be entered upon the tax list and spread upon the tax roll the same as other special assessment taxes are levied and assessed upon real estate, shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes are levied.

(3) When the special project would not result in the provision of revenue-producing continuing services, the board shall apportion the benefits thereof accruing to the several tracts of land within the district which will be benefited thereby, on a system of units. The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received. Nothing contained in this section shall prevent the district from establishing separate areas within the improvement project area so as to permit future allocation of costs for particular portions of the work to specific subareas. This subarea method of allocation shall not be used in any improvement project area which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in this section.

(4) A notice shall be inserted for at least one week in a newspaper published or of general circulation in the improvement project area stating the time when and the place where the directors shall meet for the purpose of hearing all parties interested in the apportionment of benefits by reason of the improvement, at which time and place such parties may appear in person or by counsel or may file written objections thereto. The directors shall then proceed to hear and consider the same and shall make the apportionments fair and just according to benefits received from the improvement. The directors, having completed the apportionment of benefits, shall make a detailed report of the same and file such report with the county clerk. The board of directors shall include in such report a statement of the actual expenses incurred by the district to that time which relate to the proposed project and the actual cost per benefit unit thereof. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper published or of general circulation in the improvement project area, a notice that the report required in this subsection has been filed and notice shall also be sent to each party appearing to have a direct legal

interest in such apportionment, which notice shall include the description of the lands in which each party notified appears to have such interest, the units of benefit assigned to such lands, the amount of actual costs assessable to date to such lands, and the estimated total costs of the project assessable to such lands upon completion thereof, as provided by sections 25-520.01 to 25-520.03. If the owners of record title representing more than fifty percent of the estimated total assessments file with the board within thirty days of the final publication of such notice written objections to the project proposed, such project and work in connection therewith shall be suspended, such project shall not be done in such project area, and all expenses relating to such project incurred by and accrued to the district may, at the direction of the board of directors, be assessed upon the lands which were to have been benefited by the completion of such improvement project in accordance with the apportionment of benefits determined and procedures established in this section. Upon completing the establishment of an improvement project area or altering the boundaries of an existing improvement project area as provided in this subsection and upon determining the reimbursable cost of the project and the period of time over which such cost shall be assessed, the board of directors shall determine the amount of money necessary to raise each year by special assessment within such improvement project area and apportion the same in dollars and cents to each tract benefited according to the apportionment of benefits as determined by this section. The board of directors shall also, from time to time as it deems necessary, order an additional assessment upon the lands and property benefited by the project, using the original apportionment of benefits as a basis to ascertain the assessment to each tract of land benefited, to carry out a reasonable program of operation and maintenance upon the construction or capital improvements involved in such project. The chairperson and secretary shall thereupon return lists of such tracts with the amounts chargeable to each of the county clerks of each county in which assessed lands are located, who shall place the same on duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer at the same time as general real estate taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid. All provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to such special assessments.

Source: Laws 1969, c. 9, § 54, p. 131; Laws 1972, LB 543, § 14; Laws 1973, LB 206, § 6; Laws 1981, LB 326, § 10; Laws 1994, LB 480, § 15; Laws 1996, LB 1044, § 39; Laws 1999, LB 436, § 10; Laws 2000, LB 900, § 58; Laws 2001, LB 136, § 3; Laws 2001, LB 667, § 1; Laws 2007, LB 296, § 18.

Cross Reference

Nebraska Safe Drinking Water Act, see section 71-5313.

CHAPTER 2

ARTICLE 32

INTERSTATE AGREEMENTS

2-32,102. Natural resources; agreements with other states; authorized.

The State of Nebraska may enter into agreements for the purpose of providing interstate cooperation and coordination in matters relating to natural resources with two or more of the following states: South Dakota, North Dakota, Montana, Wyoming, and Colorado. These states have cultural, economic, social, agricultural, and natural resources similarities as evidenced by such states' (1) past affiliations in interstate organizations such as the Old West Regional Commission and the Missouri River Basin Commission and (2) identity as reclamation states in the Upper and Lower Regions of the United States Bureau of Reclamation.

Source: Laws 1985, LB 705, § 1.

CHAPTER 2

ARTICLE 42

CONSERVATION CORPORATION

2-4215. Coordinate activities with state and natural resources districts.

In exercising any powers granted by the Conservation Corporation Act, the corporation shall coordinate its activities with the land and water resources policies, programs, and planning efforts of the state, particularly the Department of Environmental Quality and the Department of Natural Resources, and with the several natural resources districts throughout the state.

Source: Laws 1981, LB 385, § 15; Laws 1993, LB 3, § 4; Laws 2000, LB 900, § 62.

CHAPTER 2

ARTICLE 49

CLIMATE ASSESSMENT RESPONSE COMMITTEE

2-4901. Climate Assessment Response Committee; created; members; expenses; meetings.

(1) The Climate Assessment Response Committee is hereby created. The office of the Governor shall be the lead agency and shall oversee the committee and its activities. The committee shall be composed of representatives appointed by the Governor with the approval of a majority of the Legislature from livestock producers, crop producers, the Nebraska Emergency Management Agency, and the Conservation and Survey Division and Cooperative Extension Service of the University of Nebraska. The Director of Agriculture or his or her designee, the chief executive officer of the Department of Health and Human Services or his or her designee, and the Director of Natural Resources or his or her designee shall be ex officio members of the committee. Representatives from the federal Consolidated Farm Service Agency and Federal Crop Insurance Corporation may also serve on the committee at the invitation of the Governor. The chairperson of the Committee on Agriculture of the Legislature and the chairperson of the Committee on Natural Resources of the Legislature shall be nonvoting, ex officio members of the committee. The Governor may appoint a member of the Governor's Policy Research Office and any other state agency representatives or invite any other federal agencies to name representatives as he or she deems necessary. The Governor shall appoint one of the Climate Assessment Response Committee members to serve as the chairperson of the committee. Committee members shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The committee shall meet at least twice each year and shall meet more frequently (a) at the call of the chairperson, (b) upon request of a majority of the committee members, and (c) during periods of drought or other severe climate situations.

(3) The chairperson may establish subcommittees and may invite representatives of agencies other than those with members on the committee to serve on such subcommittees.

(4) Any funds for the activities of the committee and for other climate-related expenditures may be appropriated directly to the office of the Governor for contracting with other agencies or persons for tasks approved by the committee.

Source: Laws 1992, LB 274, § 1; Laws 1996, LB 43, § 1; Laws 1996, LB 1044, § 43; Laws 1999, LB 403, § 5; Laws 2000, LB 900, § 63; Laws 2007, LB 296, § 22; Laws 2009, LB 389, § 1.
Effective date: May 27, 2009.

CHAPTER 25

ARTICLE 10

COURTS CIVIL PROCEDURE

25-1062.01. Director of Natural Resources, defined; notice to appropriator; how given.

(1) The words Director of Natural Resources as used in this section and in sections 25-1064, 25-2159, and 25-2160 mean the Director of Natural Resources, State of Nebraska, his or her successor in office, or any agent, servant, employee, or officer of the State of Nebraska, now or hereafter exercising any powers or duties with respect to the administration of the irrigation water in the state, who may be a party in any court of the state in an action when the relief demanded involves the delivery of irrigation water.

(2) Whenever notice by either registered or certified letter to an appropriator is required in such sections, the address of the appropriator shall be that recorded in the office of the Department of Natural Resources under section 46-230.

Source: Laws 1941, c. 29, § 1, p. 133; C.S.Supp.,1941, § 20-10,111; R.S.1943, § 25-1062.01; Laws 1957, c. 242, § 14, p. 828; Laws 1957, c. 365, § 1, p. 1232; Laws 1986, LB 516, § 10; Laws 2000, LB 900, § 65.

CHAPTER 33

ARTICLE 1

FEES

33-105. Department of Natural Resources; fees.

There shall be paid to the Department of Natural Resources in advance for the services of the Director of Natural Resources by the party demanding or necessitating the service the following fees:

(1) For filing, recording, and examining each application for a storage reservoir, for the first five thousand acre-feet or fraction thereof, twenty-five dollars, and for each additional five thousand acre-feet or fraction thereof, ten dollars;

(2) For filing, recording, and examining each application for, or application for modification of permits to include, intentional or incidental underground water storage and recovery, five hundred dollars;

(3) For filing, recording, and examining each application for water for irrigation from a natural stream, for the first one thousand acres proposed for irrigation or fraction thereof, two hundred dollars, and for each additional one thousand acres or fraction thereof, one hundred dollars;

(4) For filing, recording, and examining each application for water for irrigation from a storage reservoir, for the first one thousand acres proposed for irrigation or fraction thereof, fifty dollars, and for each additional one thousand acres or fraction thereof, twenty-five dollars;

(5) For filing, recording, and examining each application for water for power purposes, for each theoretical fifty horsepower or fraction thereof, five dollars;

(6) For filing, recording, and examining each application for withdrawal of ground water for industrial purposes, for the first four thousand acre-feet or fraction thereof, one thousand five hundred dollars, and for each additional one thousand acre-feet or fraction thereof, seven hundred fifty dollars;

(7) For filing an application to amend a permit for withdrawal of ground water for industrial purposes, five hundred dollars;

(8) For filing any petition, affidavit, other paper, or application for which no fee has been fixed, ten dollars;

(9) For recording any deed or document pertaining to land covered in whole or in part by a water appropriation or any instrument other than an application, ten dollars; and

(10) For certificate and seal, one dollar.

The Director of Natural Resources shall keep a record of all money thus received and shall remit such money to the State Treasurer for credit to and use of the General Fund.

Source: Laws 1905, c. 167, § 1, p. 652; Laws 1911, c. 153, § 34, p. 519; R.S.1913, § 2427-8; C.S.1922, § 2368; C.S.1929, § 33-107; R.S.1943, § 33-105; Laws 1947, c. 119, § 1, p. 352; Laws 1957, c. 365, § 7, p. 1235; Laws 1957, c. 131, § 1, p. 445; Laws 1978, LB 773, § 1; Laws 1979, LB 547, § 1; Laws 1981, LB 56, § 17; Laws 1983, LB 198, § 3; Laws 1985, LB 103, § 1; Laws 1985, LB 488, § 1; Laws 1986, LB 309, § 1; Laws 1989, LB 45, § 1; Laws 1989, LB 132, § 1; Laws 2000, LB 900, § 85; Laws 2005, LB 335, § 73.

CHAPTER 37

ARTICLE 7

STATE GAME REFUGES

37-707. Game refuges; boundaries; marking; Department of Natural Resources; duties; access to property; when.

(1) The commission is directed to place suitable signs showing the boundaries of the refuges, as designated in section 37-706, using the map adopted by the Department of Natural Resources pursuant to this section, on all roads leading into such refuges.

(2)(a) The Department of Natural Resources shall adopt and promulgate rules and regulations determining the boundaries of the state game refuges. The department's determination shall be based on the definitions in sections 37-701 to 37-708 and shall include maps showing such boundaries.

(b) The department shall make the initial boundary determinations for the state game refuge in Garden County by March 1, 2005. The department shall make the initial boundary determinations for the remaining state game refuges by January 1, 2006.

(c) Until the initial determinations are made pursuant to subdivision (a) of this subsection, the boundaries that have been determined and maintained by the commission shall remain in effect.

(d) The department shall update any boundary determination required by subdivision (a) of this subsection whenever it determines that there has been a substantial change in the location of the banks of said stream used for locating such boundary.

(e) To the extent necessary to fulfill their obligations under sections 37-701 to 37-708 and pursuant to notice as provided in subdivision (f) of this subsection, the department and the commission shall have access at all reasonable times to all properties to which access is needed to fulfill such obligations. Entry upon such properties for the purposes set forth in such sections shall not be considered trespass.

(f) Notice of intent to enter upon property for the purposes of subdivision (2)(e) of this section shall be satisfied by publishing such notice at least once each week for three consecutive weeks in a legal newspaper published or of general circulation in the county or counties in which such property and such game refuge are located.

Source: Laws 1939, c. 43, § 2, p. 202; C.S.Supp., 1941, § 37-429; R.S. 1943, § 37-419; Laws 1947, c. 135, § 3, p. 380; R.S. 1943, (1993), § 37-419; Laws 1998, LB 922, § 321; Laws 2004, LB 826, § 4.

Game Refuge Act was sustained as constitutional against contention that it was special law for protection of game and

fish. *Bauer v. State Game, Forestation and Parks Com.*, 138 Neb. 436, 293 N.W. 282 (1940).

CHAPTER 37

ARTICLE 8

NONGAME AND ENDANGERED SPECIES ACT

37-807. Commission; establish conservation programs; agreements authorized; Governor and state agencies; duties; public meeting; when required.

(1) The commission shall establish such programs, including acquisition of land or aquatic habitat or interests therein, as are necessary for the conservation of nongame, threatened, or endangered species of wildlife or wild plants. Acquisition for the purposes of this subsection shall not include the power to obtain by eminent domain.

(2) In carrying out programs authorized by this section, the commission shall consult with other states having a common interest in particular species of nongame, endangered, or threatened species of wildlife or wild plants and may enter into agreements with federal agencies, other states, political subdivisions of this state, or private persons with respect to programs designed to conserve such species including, when appropriate, agreements for administration and management of any area established under this section or utilized for conservation of such species.

(3) The Governor shall review other programs administered by him or her and utilize such programs in furtherance of the purposes of the Nongame and Endangered Species Conservation Act. All other state agencies shall, in consultation with and with the assistance of the commission, utilize their authorities in furtherance of the purposes of the act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 37-806 and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the commission to be critical. For purposes of this subsection, state agency means any department, agency, board, bureau, or commission of the state or any corporation whose primary function is to act as, and while acting as, an instrumentality or agency of the state, except that state agency shall not include a natural resources district or any other political subdivision.

(4) The commission shall provide notice and hold a public meeting prior to the implementation of conservation programs designed to reestablish threatened, endangered, or extirpated species of wildlife or wild plants through the release of animals or plants to the wild. The purpose of holding such a public meeting shall be to inform the public of programs requiring the release to the wild of such wildlife or wild plants and to solicit public input and opinion. The commission shall set a date and time for the public meeting to be held at a site convenient to the proposed release area and shall publish a notice of such meeting in a legal newspaper published in or of general circulation in the county or counties where the proposed release is to take place.

The notice shall be published at least twenty days prior to the meeting and shall set forth the purpose, date, time, and place of the meeting.

Source: Laws 1975, LB 145, § 6; Laws 1984, LB 1106, § 22; Laws 1987, LB 150, § 3; Laws 1991, LB 772, § 3; R.S.1943, (1993), § 37-435; Laws 1998, LB 922, § 357.

As the Department of Water Resources is a state agency within the meaning of the Nongame and Endangered Species Act, the issuance of a permit through its director would qualify as an "action" taken by a state agency. Therefore, the director may not issue permits which would jeopardize the continued existence of an endangered or threatened species, or result in the destruction or modification of their habitat. Central Platte NRD v. City of Fremont, 250 Neb. 252, 549 N.W.2d 112 (1996).

Before authorizing a diversion project, the Department of Water Resources must consult with the Game and Parks Commission and must obtain an opinion as to whether the project will jeopardize threatened or endangered species. However, the opinion, merely by being issued, does not impose affirmative requirements upon an application. Central Platte NRD v. State of Wyoming, 245 Neb. 439, 513 N.W.2d 847 (1994).

If the director of the state Department of Water Resources, pursuant to subsection (3) of this section, considers and relies

on the opinion of the state Game and Parks Commission in making his or her decision about diversion of unappropriated waters, the applicant is affected by the statute and thus is entitled to challenge its constitutionality. This section does not violate the provisions of Article XV, sections 4, 5, and 6, of the Constitution of Nebraska. In re Applications A-10627 et al., 243 Neb. 419, 499 N.W.2d 548 (1993).

This section places two separate and distinct duties upon state departments and agencies, that of consultation with the Game and Parks Commission and, once done, an independent duty to insure that the actions they take or authorize do not jeopardize the continued existence of an endangered species or its habitat. Both the Department of Water Resources and the various natural resources districts are state departments or agencies within the meaning of this act. Little Blue N.R.D. v. Lower Platte North N.R.D., 210 Neb. 862, 317 N.W.2d 726 (1982).

CHAPTER 46

ARTICLE 2

WATER POLICY TASK FORCE

46-2,131. Repealed. Laws 2011, LB 2, § 8.

46-2,132. Repealed. Laws 2011, LB 2, § 8.

46-2,133. Repealed. Laws 2011, LB 2, § 8.

46-2,134. Repealed. Laws 2011, LB 2, § 8.

46-2,135. Repealed. Laws 2011, LB 2, § 8.

46-2,136. Repealed. Laws 2011, LB 2, § 8.

46-2,137. Repealed. Laws 2011, LB 2, § 8.

46-2,138. Repealed. Laws 2011, LB 2, § 8.

CHAPTER 46

ARTICLE 2

REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

46-2,140. Repealed. Laws 2015, LB 9, § 1.

46-2,141. Repealed. Laws 2015, LB 9, § 1.

CHAPTER 46

ARTICLE 12

WATER WELL CONTRACTORS LICENSING BOARD

46-1217. Water Well Standards and Contractors' Licensing Board; created; members; qualifications.

(1) There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of ten members, six of whom shall be appointed by the Governor as follows: (a) A licensed water well contractor representing irrigation water well contractors, (b) a licensed water well contractor representing domestic water well contractors, (c) a licensed water well contractor representing municipal and industrial water well contractors, (d) a licensed pump installation contractor, (e) a manufacturer or supplier of water well or pumping equipment, and (f) a holder of a license issued under the Water Well Standards and Contractors' Practice Act employed by a natural resources district. The chief executive officer of the Department of Health and Human Services or his or her designated representative, the Director of Environmental Quality or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director of the Conservation and Survey Division of the University of Nebraska or his or her designated representative shall also serve as members of the board.

(2) Each member shall be a resident of the state. Each industry representative shall have had at least five years of experience in the business of his or her category prior to appointment and shall be actively engaged in such business at the time of appointment and while serving on the board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Practice Act shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade associations of each category.

Source: Laws 1986, LB 310, § 17; Laws 1993, LB 3, § 32; Laws 1993, LB 131, § 42; Laws 1996, LB 1044, § 266; Laws 2000, LB 900, § 235; Laws 2006, LB 508, § 5; Laws 2007, LB 296, § 209; Laws 2007, LB 463, § 1155.

Cross Reference

Provisions regarding Water Well Standards and Contractors' Licensing Board, see sections 38-151, 38-155, and 38-158 to 38-174.

CHAPTER 81

ARTICLE 1

GOVERNOR AND ADMINISTRATIVE DEPARTMENTS

81-101. Executive department; civil administration vested in Governor; departments created.

The civil administration of the laws of the state is vested in the Governor. For the purpose of aiding the Governor in the execution and administration of the laws, the executive and administrative work shall be divided into the following agencies: (1) Department of Agriculture; (2) Department of Labor; (3) Department of Roads; (4) Department of Natural Resources; (5) Department of Banking and Finance; (6) Department of Insurance; (7) Department of Motor Vehicles; (8) Department of Administrative Services; (9) Department of Economic Development; (10) Department of Correctional Services; (11) Nebraska State Patrol; and (12) Department of Health and Human Services.

Source: Laws 1929, c. 51, § 1, p. 209; C.S.1929, § 81-101; Laws 1933, c. 149, § 1, p. 571; C.S.Supp.,1941, § 81-101; R.S.1943, § 81-101; Laws 1955, c. 329, § 4, p. 1027; Laws 1957, c. 365, § 8, p. 1236; Laws 1957, c. 366, § 51, p. 1282; Laws 1959, c. 424, § 1, p. 1423; Laws 1961, c. 415, § 29, p. 1259; Laws 1961, c. 416, § 9, p. 1267; Laws 1963, c. 504, § 1, p. 1609; Laws 1969, c. 778, § 1, p. 2949; Laws 1973, LB 563, § 16; Laws 1976, LB 561, § 4; Laws 1981, LB 541, § 4; Laws 1991, LB 58, § 2; Laws 1996, LB 1044, § 835; Laws 1999, LB 36, § 35; Laws 2000, LB 900, § 246; Laws 2007, LB 296, § 726; Laws 2007, LB 334, § 102.

Cross References

Department of Administrative Services, see section 81-1103.

Department of Aeronautics, see section 3-103.

Department of Correctional Services, see section 83-171.

Department of Economic Development, see section 81-1201.02.

Department of Environmental Quality, see section 81-1502.

Department of Health and Human Services, see section 81-3113.

Department of Revenue, see section 77-360.

Department of Veterans' Affairs, see section 80-401.02.

Military Department, see section 55-120.

Cross References - continued on next page

Nebraska State Patrol, see section 81-2001.

State Department of Education, see section 79-301 and Article VII, section 2, Constitution of Nebraska.

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. *American Fed. of S., C. & M. Emp. v. Department of Public Institutions*, 195 Neb. 253, 237 N.W.2d 841 (1976).

Matters of fair employment practices and civil rights are matters of statewide and not local concern. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

The terms of this section limit its application to the departments named therein. *State ex rel. Beck v. Obbink*, 172 Neb. 242, 109 N.W.2d 288 (1961).

Department of Water Resources was created by this section. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Reclamation Act was not unconstitutional as conferring judicial powers on an executive or administrative body. *Nebraska Mid-State Reclamation District v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950).

Language used in the civil administrative code refers to executive departments. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Executive department was reorganized in 1933, and, by the terms of the reorganization, heads were established for various departments. *State ex rel. Howard v. Marsh*, 146 Neb. 750, 21 N.W.2d 503 (1946).

Department of Banking is an executive and administrative branch of state government with general supervision of banks and banking laws. *State v. Kastle*, 120 Neb. 758, 235 N.W. 458 (1931).

Civil administration of laws is vested in Governor, and to aid Governor, departments of state government were created. *Eidenmiller v. State*, 120 Neb. 430, 233 N.W. 447 (1930).

Department secretary was not authorized to lease building for use of his department, and state was not bound thereby. *State ex rel. Brownell Bldg. Co. v. Cochran*, 113 Neb. 846, 205 N.W. 568 (1925).

CHAPTER 81

ARTICLE 1

DEPARTMENT HEADS

81-102. Department heads; enumeration; appointment and confirmation; removal.

The Governor shall appoint heads for the various agencies listed in section 81-101, subject to confirmation by a majority vote of the members elected to the Legislature. Such appointments shall be submitted to the Legislature within sixty calendar days following the first Thursday after the first Tuesday in each odd-numbered year. The officers shall be designated as follows: (1) The Director of Agriculture for the Department of Agriculture; (2) the Commissioner of Labor for the Department of Labor; (3) the Director-State Engineer for the Department of Roads; (4) the Director of Natural Resources for the Department of Natural Resources; (5) the Director of Banking and Finance for the Department of Banking and Finance; (6) the Director of Insurance for the Department of Insurance; (7) the Director of Motor Vehicles for the Department of Motor Vehicles; (8) the Director of Administrative Services for the Department of Administrative Services; (9) the Director of Correctional Services for the Department of Correctional Services; (10) the Director of Economic Development for the Department of Economic Development; (11) the Superintendent of Law Enforcement and Public Safety for the Nebraska State Patrol; (12) the Property Tax Administrator as the chief administrative officer of the property assessment division of the Department of Revenue; and (13) the chief executive officer for the Department of Health and Human Services. Whoever shall be so nominated by the Governor and shall fail to receive the number of votes requisite for confirmation, shall not be subject to nomination or appointment for this or any other appointive state office requiring confirmation by the Legislature during the period for which his or her appointment was sought. In case of a vacancy in any of such offices during the recess of the Legislature, the Governor shall make a temporary appointment until the next meeting of the Legislature, when he or she shall nominate some person to fill such office. Any person so nominated who is confirmed by the Legislature, shall hold his or her office during the remainder of the term if a specific term has been provided by law, otherwise during the pleasure of the Governor subject to the provisions of this section; except any such officers may be removed by the Governor pursuant to Article IV of the Constitution of Nebraska.

Source: Laws 1929,c. 51, § 2, p. 209; C.S.1929, § 81-102; Laws 1933,c. 149, § 2, p. 571; Laws 1941, c. 177, § 1, p. 695; C.S.Supp.,1941, § 81-102; R.S.1943, § 81-102; Laws 1953, c. 335, § 1, p. 1100; Laws 1957, c. 365, § 9, p. 1237; Laws 1957, c. 366, § 52, p. 1282; Laws 1961, c. 415, § 30, p. 1260; Laws 1961, c. 416, § 10, p. 1268; Laws 1963, c. 504, § 2, p. 1609; Laws 1969, c. 778, § 2, p. 2950; Laws 1969, c. 514, § 4, p. 2105; Laws 1973, LB 563, § 17; Laws 1976, LB 561, § 5; Laws 1981, LB 249, § 4; Laws 1981, LB 541, § 5; Laws 1982, LB 404, § 34; Laws 1996, LB 1044, § 836; Laws 1999, LB 36, § 36; Laws 2000, LB 900, § 247; Laws 2007, LB 296, § 727; Laws 2007, LB 334, § 103.

The Director of Water Resources is a state officer and membership on the Natural Resources Commission is an additional duty which could be imposed by the Legislature. *Neeman v. Nebraska Nat. Resources Commission*, 191 Neb. 672, 217 N.W.2d 166 (1974).

Governor appoints heads of executive departments, subject to confirmation by Legislature. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Head of the Department of Agriculture and Inspection is the director, who is appointed by the Governor. *State ex rel. Howard v. Marsh*, 146 Neb. 750, 21 N.W.2d 503 (1946).

CHAPTER 86

ARTICLE 5

GEOGRAPHIC INFORMATION SYSTEMS COUNCIL

86-570. Geographic Information Systems Council; created; members; appointment; terms; expenses.

(1) The Geographic Information Systems Council is hereby created and shall consist of:

(a) The Chief Information Officer or his or her designee, the chief executive officer or designee of the Department of Health and Human Services, and the director or designee of the Department of Environmental Quality, the Conservation and Survey Division of the University of Nebraska, the Department of Natural Resources, and the Governor's Policy Research Office;

(b) The Director-State Engineer or designee;

(c) The State Surveyor or designee;

(d) The Clerk of the Legislature or designee;

(e) The secretary of the Game and Parks Commission or designee;

(f) The Property Tax Administrator or designee;

(g) One representative of federal agencies appointed by the Governor;

(h) One representative of the natural resources districts nominated by the Nebraska Association of Resources Districts and appointed by the Governor;

(i) One representative of the public power districts appointed by the Governor;

(j) Two representatives of the counties nominated by the Nebraska Association of County Officials and appointed by the Governor;

(k) One representative of the municipalities nominated by the League of Nebraska Municipalities and appointed by the Governor;

(l) Two members at large appointed by the Governor; and

(m) Such other members as nominated by the Nebraska Information Technology Commission and appointed by the Governor.

(2) The appointed members shall serve terms as determined by the Nebraska Information Technology Commission.

(3) The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1991, LB 639, § 2; Laws 1993, LB 3, § 72; Laws 1998, LB 924, § 48; Laws 1999, LB 594, § 71; Laws 2000, LB 900, § 250; R.S.Supp., 2000, § 81-2602; Laws 2002, LB 1105, § 340; Laws 2006, LB 921, § 28; Laws 2007, LB 296, § 812; Laws 2008, LB 797, § 29; Laws 2008, LB 823, § 18.

The Revisor of Statutes has pursuant to section 49-769 correlated LB797, section 29, with LB823, section 18, to reflect all amendments.

Changes made by LB797 became operative July 18, 2008. Changes made by LB823 became effective July 18, 2008.

CHAPTER 28

ARTICLE 1

CLASSIFICATION OF PENALTIES

28-106. Misdemeanors; classification of penalties; sentences; where served.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor	Maximum — not more than one year imprisonment, or one thousand dollars fine, or both Minimum — none
Class II misdemeanor.....	Maximum — six months imprisonment, or one thousand dollars fine, or both Minimum — none
Class III misdemeanor	Maximum — three months imprisonment, or five hundred dollars fine, or both Minimum — none
Class IIIA misdemeanor	Maximum — seven days imprisonment, five hundred dollars fine, or both Minimum — none
Class IV misdemeanor	Maximum — no imprisonment, five hundred dollars fine Minimum — none
Class V misdemeanor	Maximum — no imprisonment, one hundred dollars fine Minimum — none
Class W misdemeanor.....	Driving under the influence or implied consent First conviction Maximum — sixty days imprisonment and five hundred dollars fine Mandatory minimum — seven days imprisonment and five hundred dollars fine Second conviction Maximum — six months imprisonment and five hundred dollars fine Mandatory minimum — thirty days imprisonment and five hundred dollars fine Third conviction Maximum — one year imprisonment and one thousand dollars fine Mandatory minimum — ninety days imprisonment and one thousand dollars fine

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that such sentences may be served in institutions under the jurisdiction of the Department of Correctional Services if the sentence is to be served concurrently or consecutively with a term for conviction of a felony and the combined sentences total a term of one year or more. A determinate sentence shall be imposed for a misdemeanor if the sentence is to be served concurrently or consecutively with a determinate sentence for a Class III, IIIA, or IV felony.

Source: Laws 1977, LB 38, § 6; Laws 1982, LB 568, § 1; Laws 1986, LB 153, § 1; Laws 1992, LB 291, § 1; Laws 1998, LB 309, § 1; Laws 2002, LB 82, § 3; Laws 2005, LB 594, § 1; Laws 2011, LB 675, § 1; Laws 2015, LB 605, § 7; Laws 2016, LB 1094, § 3.

The proper determination of punishment for fourth offense driving under the influence of an alcoholic liquor or drug is governed by subsection (1) of this section and not by section 28-107(3). *State v. Schultz*, 252 Neb. 746, 566 N.W.2d 739 (1997).

For a Class III misdemeanor, a sentence of five days in jail with a fine of three hundred dollars is within the statutory maximum and will not be disturbed on appeal absent an abuse of discretion. *State v. Rosenberry*, 209 Neb. 383, 307 N.W.2d 823 (1981).